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Michael N. Milby, Clerk

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FOR THE SOUTHERN DISTRICT OF TEXAS  
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U.S. COURTS  
SOUTHERN DISTRICT  
OF TEXAS

ROBERT P. BERG  
d/b/a BOB BERG BUCKLES  
d/b/a SILVERDALES,

Plaintiff,

v.

JOANNE SYMONS  
d/b/a HYOSILVER, et al.,

Defendants.

Civil Action No. H-03-2683

**DECLARATION OF ROBERT P. BERG IN SUPPORT OF HIS MOTION FOR  
PARTIAL SUMMARY JUDGMENT ON COPYRIGHT INFRINGEMENT**

1. My name is Robert Peter Berg.
2. I have been continuously involved in the Western Rodeo industry for the past thirty-eight years. I am known in my industry as Bob Berg.
3. For the past thirty years, I have been designing western and rodeo jewelry, belt buckles, and trophies, and selling my jewelry in the western and rodeo jewelry industry.
4. My designs have been widely recognized in the western and rodeo jewelry industry for my tri-colored and tri-leveled gold and silver jewelry designs with black backgrounds and raised edges bearing a series of large round beads (with the largest bead in the center of the series) including for bracelets, earrings, pendants, buckles, conchos, belts, spurs, bridles, and trophies.
5. I first began experimenting with and using one or more of the Berg Elements in

Australia through the 1980's and 1990's until I finally evolved the combination of elements I describe above that provides the "Berg" signature look.

6. Examples of my jewelry designs with my signature look are promoted on my web site: <http://www.bobbergd designs.com>.

7. I moved to the United States in 1993 specifically to develop the U.S. market for my signature line of western and rodeo jewelry.

8. When I first introduced my signature look for western and rodeo jewelry in the United States in 1990, western and rodeo jewelry in the U.S. was primarily and typically bright gold overlays with a bright silver hand engraved background. Exhibit 1 hereto accurately depicts typical western jewelry.

9. My signature look introduced a new feel to western and rodeo jewelry in the United States because I used in my signature line custom cut-out multi-colored gold overlays that were applied in three levels to a black enamel antique background. I also substituted the typical rope/bead edge with a new look that introduced groups of large round beads with successively smaller beads adjacent to a central larger bead.

10. This signature look introduces more manufacturing costs in making the jewelry since it requires about twice the labor cost of making the typical western and rodeo jewelry. The look is a little hard to define but it includes using the tri-colored and tri-layered gold overlays on a black background that affords a sharp relief of the scroll work. The vine scroll work adds to the look as does the large round beads in differing size as I have already described. The first and perhaps most noticeable attraction of the piece at a distance is the black background and then upon closer inspection the other elements.

11. I wanted to introduce a look into the U.S. market that made heads turn. I also knew

that I was taking a risk because my signature look resulted in western and rodeo jewelry that had a great new look but which cost significantly more to the consumer than the typical jewelry. For example, my top of the line belt buckle cost \$1,750 to the consumer. It took many years of promotion to develop the demand for this jewelry. Since then people such as Tanya Tucker and George Strait have become part of the demand for my jewelry which has made my look even more famous.

12. My business has sold over seven million dollars of western and rodeo jewelry in the United States alone having these “Berg” elements.

13. My business has spent hundreds of thousands of dollars over the years advertising or otherwise promoting western and rodeo jewelry having these “Berg” elements in association with the Bob Berg name.

14. I have consistently used and promoted the Berg Elements in my signature line of jewelry under Bob Berg name in the United States since 1993.

15. I have consistently referred to my designs in my advertising as “unique, innovative, exceptional” or “distinctive, innovative, exceptional.” A true and correct copy of my advertising is attached hereto as Exhibit 2.

16. I have over four hundred federally copyrighted designs that include these “Berg” elements. My designs and the jewelry have been registered with the U.S. Copyright Office under Reg. Nos. VA-530-294, VA-547-192, VAu-292-803, VA-817-815, VA-1-076-361, VA-1-091-617, VA-1-096-096, VA-1-108-395, and VA-1-159-548. These registrations include issue dates in 1992, 1993, 1994, 1996, 2000, 2001 and 2002. A true copy of my U.S. Copyright Reg. VA-1-091-617, including representative samples of the deposits made for each registration, are attached hereto as Exhibit 3.

17. Joanne Symons, my former wife, worked with me for sixteen years on the businesses of Bob Berg Buckles and Silverdales. During this time she consistently acknowledged and promoted my western and rodeo jewelry design “signature look” as unique.

18. When we divorced, I was awarded the businesses of Bob Berg Buckles and Silverdales, and all rights thereunder and thereto, as my separate property. This is reflected on paragraph H-6 of the divorce decree, which is attached as Exhibit U of Joanne Symons’ Motion for Partial Summary Judgment of Non-Distinctiveness or in the Alternative Co-Ownership. The divorce decree expressly states that I am awarded:

The business known as Bob Berg Buckles, including but not limited to all fixtures, inventory, cash, receivables, accounts, goods, and supplies; **and all rights and privileges, past, present, and future**, arising out of or in connection with the operation of the business.

19. The same award is made for my Silverdale’s business in paragraph H-7.

20. In 1999, prior to the conclusion of our divorce, Symons created a separate company to sell Western and Rodeo Jewelry. This company is called Hy O Silver. It is Symons continued sales of jewelry infringing copyrighted Bob Berg Jewelry designs and trade dress that I have complained of in this lawsuit.

21. Notwithstanding the award of the rights of his jewelry designs to me in the divorce, Joanne Symons has copied and commercially sold my designs for profit and without my authority.

22. Symons has also traded on the goodwill of my name by continuing to make use of my name after the divorce and notwithstanding that her name was legally changed in the divorce decree to Joanne Dorothy Symons.

23. Symons’s company has also attempted to and has in fact traded on my name by

registering a series of internet URL's which include my name and linking these URL's to Symons Hy O Silver website that promotes the infringing products. Instead of developing her own name and line of competing jewelry, Ms. Symons has misappropriated my name, designs, and "signature look" in the western jewelry market.

24. Originally, I created and manufactured my western jewelry designs in Texas. In order to reduce costs, I moved manufacturing to Mexico in 1995. I set up a manufacturing factory in Guadalajara, Mexico and moved most of my manufacturing equipment, including molds, dies, forms, drawings and design specifications into the factory.

25. I also hired Cesar Navia and trained him in the special silversmith techniques that I developed to manufacture jewelry incorporating my signature look. I gave Navia full, unrestricted access to all of my factory equipment, as well as my drawings and design specifications for my products. Navia began manufacturing my products exclusively for me and my two businesses, Bob Berg Buckles and Silverdales. I never granted Navia any right to manufacture or distribute the products with my copyrighted designs or signature look for any other individual or entity, including Navia himself.

26. I have since come to learn that in 2000, Symons, my former wife and employee, contacted Navia and convinced him to begin manufacturing counterfeit products for Symons' business, Hy O Silver. Navia as I now understand moved my equipment and designs, including dies, casting, over 70 rubber molds and figures, 3 Graver Max Machines, 1 Flex Shaft Machine, buckle blanks, assorted tools, a computer, and my original artwork and jewelry artwork computer files, gold sheets and semi-precious stones, from the Guadalajara facility, established a new shop in Guadalajara, and began manufacturing copied products for distribution in the United States by Hy O Silver using my equipment and material.

27. Hy O Silver's copies of my products are currently for sale and have been advertised and publicly displayed throughout the United States in various rodeo and western industry periodicals as well as the Hy O Silver website located at <http://www.hyosilver.com>.

28. True copies of my copied product designs advertised for sale on Hy O Silver's web site and the infringing products sold by HyOSilver on or about March 6, 2003 are attached hereto and made a part hereof as Exhibit 4. Each Hy O Silver product is marked the Berg product number of the Berg product in the deposit material from which the Hy O Silver product was copied.

29. For example, a comparison of my product number 3020 in Exhibit 3, i.e., one of my copyrighted buckle designs in the deposit materials of the -617 copyright registration, with the Hy O Silver product correspondingly marked 3020 in Exhibit 4 of Hy O Silver infringing products, shows that it is a copy of my design. It has the same raised edge-border, the same overall configuration, the same number of beads on the raised edge border, the same black background, and the same design within the border.

28. Also identical copies of my designs are Hy O Silver products marked 3006, 3017, 3001, 3002, 2509, 2503, 2510, 2023, 2050, 2024, 2005, 2052, 4541, 4512, 4518, 4514, ring labeled "straight band", 6574, 6511, 6508, 6504, 6502, 6507, 4015, 4006, 4007, 4010, 6007, and 6002. Each and every one of these Hy O Silver products from Symons web site is an identical copy of a design that I copyrighted in my Reg. No. VA-1-091-617.

29. I also believe that there are other identical copies that Symons and Hy O Silver are selling, duplicating, and displaying.

30. The other Hy O Silver products that use the Berg Elements including the multi-tiered

tri-colored gold and silver with black background and raised edges with the tapered sized beads thereupon that makes my signature look.

31. The largest tradeshow in the nation for western jewelry is every December at the National Finals Rodeo in Las Vegas, Nevada. It is my understanding that Joanne Symons will be displaying my copyrighted jewelry there without my authority. The effect this will have on business is significant and hard to calculate because there will be confusion at the show.

32. These Hy O Silver knock off's of my jewelry items have been sold and/or offered for sale throughout the United States by personal appearances at rodeos and livestock shows, by sales over the Internet, by direct orders over the telephone, and through periodicals or magazines distributed throughout the United States.

33. Symons has copied my designs and used them to duplicate my product line. She now competes with me with my own designs for not only buckles, but rings, pendants, earrings, conchos, key rings, and even such products as western jewelry knives, watch bands, and money clips.

34. By doing so, Symons not only copies my work, but also appropriates the public recognition of my signature look.

35. The overall appearance or image of my signature line of western jewelry characterized by the Berg Elements has become uniquely associated with me through my longstanding use of the Berg Elements exclusively in my signature line of western jewelry. By copying my designs, Symons is also trading upon the goodwill and recognition of quality that is associated with my signature line of jewelry. The recognition of the quality and craftsmanship of my products is goodwill that has taken me over thirty years to acquire.

36. There has already been much confusion in the marketplace because of Symons copying of my designs and my signature look. I cannot control the quality or nature of Symons products and the goodwill that is associated with me is threatened and eroded by Symons continued copying of my designs and signature look.

37. I know that consumers have been confused by Symons copying of my designs and her unauthorized use of the Berg Elements in the western jewelry market because I have received numerous requests from customers to repair unauthorized copies of my signature western jewelry that were sold to them by Symons and others working with her. Though neither I nor my companies had sold them the jewelry, they thought that they were still buying it from me, through an authorized agent or distributor, when they bought the unauthorized copies from Symons and others working with her.

I do hereby swear and affirm under penalty of perjury that the foregoing is true.

Executed on November \_\_\_\_, 2004 at Cleburne, Texas.

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Robert Peter Berg



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